

Date of decision: 19/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

GOVINDBHAI T. SORATHIA

vs

COMPETENT AUTHORITY AND DEPUTY COLLECTOR (ULC), RAJKOT & ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 28th June 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 14th March 1988 in Appeal No. Rajkot-1219 of 1984 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 562.26 square meters.

2. The facts giving rise to this petition move in a narrow

compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act. It came to be processed by respondent No.1. After observing necessary formalities under sec. 8 thereof, by his order passed on 28th June 1984 under sub-section (4) thereof, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 562.26 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-1219 of 1984. By the order passed on 14th March 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. As rightly submitted by learned Advocate Shri Nanavaty for the petitioner, the constructed house property in existence prior to coming into force of the Act will have to be excluded from the petitioner's holding in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567.

4. It is the case of the petitioner that in the town planning scheme the area of Survey No. 293/1 admeasuring 1416 square meters stands reduced to 1004 square meters. If the area of the reconstituted plot under the town planning scheme is taken into consideration and if the constructed house property is excluded, runs the submission of learned Advocate Shri Nanavaty for the petitioner, the holding of the petitioner can be said to be within the ceiling limit. It transpires from the material on record that the town planning scheme was not finalised at the time the impugned orders at Annexures A and B came to be passed. Learned Advocate Shri Nanavaty for the petitioner informs me that the town planning scheme in question has come to be finalised. He has shown to me a xerox copy of the order passed by the Assistant Town Planner of the Municipal Corporation of Rajkot showing that the area of the aforesaid parcel of land bearing survey No. 293/1 has been reconstituted as Final Plot No. 26 admeasuring 1004 square meters. In that view of the matter, the petitioner's holding is required to be taken into consideration as finalised in the town planning scheme in question.

5. In view of my aforesaid discussion, I am of the opinion that the matter deserves to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. The impugned orders at Annexures A and B to this petition will have

therefore to be quashed and set aside for the purpose.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 28th June 1984 at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 14th March 1988 in Appeal No. Rajkot-1219 of 1984 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
